

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. : **10/814785**
Applicant : Mac et al.
Filing date : April 1, 2004
Title : Method and Apparatus for Treating the Body
TC/A.U. : 3735
Examiner : **Farah**
Docket No. : **5351**
Customer No. : 26936

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPELLANTS' BRIEF ON APPEAL TO
THE BOARD OF PATENT APPEALS AND INTERFERENCES

Sir:

This is appellant's brief on appeal to the Board of Patent Appeals and Interferences, from the final rejection of the application identified above.

REAL PARTY IN INTEREST

The real party in interest is Mac Beam Inc., a corporation of California, owner of all rights under an assignment from the inventors recorded at reel 018502, frame 0607.

RELATED APPEALS AND INTERFERENCES

There is no related appeal or interference.

STATUS OF CLAIMS

Claims 14 - 16 and 19 - 20 are finally rejected, and are the claims on appeal.

Claims 1 - 13 and 17 - 18 have been canceled.

STATUS OF AMENDMENTS

All amendments have been entered.

SUMMARY OF THE CLAIMED SUBJECT MATTER

An apparatus for harmonizing energy in Auyverdic therapy with non-ionizing low level bio-energy apparatus comprises a power source (page 6, last paragraph, subparagraph (a)) for providing power to light sources (subparagraph (f)) which generate light beams for healing purposes. The light sources are arranged in multiple independently operable arrays of both visible light emitting devices and invisible light emitting devices (page 9, penultimate paragraph) for providing a harmonizing effect on the body. Each of the light source arrays is controlled automatically by a respective one of plural preset protocols (Description of the Preferred Embodiment, second sentence), each said protocol defining wavelength, intensity, dosage and treatment values (page 9, last paragraph) suitable for treatment of a different condition or part of the body. The apparatus preferably includes a plurality of different applicators including probes, ear probes, wands and arrays (page 9, penultimate paragraph) to provide non-ionizing bio-energy for treatment. These applications can be turned on or off as needed during treatment. Preferably, the applicators are made of a plastic material having low thermal and electrical conductivity. The apparatus further

includes software adapted to control a count down clock (Description of the Preferred Embodiment, sixth line) which automatically shuts off the apparatus at a preset time.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 14 - 16 and 19 - 20 are rejected under 35 USC 103(a) as being unpatentable over Diamantopoulos et al. (U.S. Patent 4930504) in view of Van Zuylen et al. (U.S. Patent 6221095).

ARGUMENT

This invention provides multiple arrays of light emitting devices. The arrays are independently operable: in particular, they can be turned on or off as needed and different wavelengths may be selected simultaneously.

The inventive device further includes protocols illustrated in Table I, which specify predetermined wavelength, intensity, dosage and treatment values for selected different parts of the body. Each array is independently capable of receiving one of the preset protocols from a central microprocessor, so that different parts of the body can be treated at once.

By providing an apparatus having pre-programmed light therapy implements of different types for different parts of the body, the invention provides the therapist with a more convenience and useful tool.

Before addressing the current issues, we are constrained to summarize the procedural history of this application:

1. In response to an initial restriction requirement, claims 1 - 7 were canceled.

2. In the first substantive office action mailed November 14, 2006, claims 8 - 16, 18 and 19 were rejected as anticipated by Diamantopoulos et al., claims 8 and 15 - 17 were rejected as anticipated by Lai et al., and claim 20 was rejected as obvious over Diamantopoulos et al. in view of Welton. In response, we rewrote claim 14 in independent form and argued that Diamantopoulos (a) did not disclose a device having multiple cluster probes (arrays), and (b) did not disclose a device which include multiple protocols for different parts of the body, as recited in claim 14.

3. In the second office action (first final rejection) mailed September 12, 2007, claims 8 - 13 were rejected as anticipated by Diamantopoulos et al., and *claims 14 - 20 were allowed*. We thereupon canceled claims 8 - 13, to expedite the application, which had then been pending for almost four years. We simultaneously appealed the final rejection to the BPAI on March 12, 2008, as a precaution in case allowance did not result.

4. Surprisingly, our cancellation of all rejected claims was shortly followed by a new non-final third office action mailed April 7, 2008, in which claims 14 - 20 were rejected on a new ground (obviousness over Diamantopoulos et al. in view of McDaniel). The examiner reasoned that “McDaniel discloses an alternative treatment apparatus and methods of use for treating various dermatological conditions using electromagnetic energy wherein suitable treatment energies are selected for the various dermatological conditions being treated.” He concluded that therefore

“it would have been obvious to one of ordinary skill in the art to modify Diamantopoulos et al. in view of McDaniel and select treatment energy parameters suitable for the desired tissue, skin condition as claimed.”

5. In our response to the third office action, we agreed with the examiner’s characterization of McDaniel’s disclosure; however, we did not agree that that teaching would have led one to modify Diamantopoulos’ apparatus to include

“multiple independently operable arrays of both visible and invisible light emitting devices ... wherein each of said light source arrays is controlled automatically by a respective one of plural preset protocols, each said protocol defining wavelength, intensity, dosage and treatment values suitable for treatment of a different part of the body”

as recited in claim 14. We asked the Examiner to identify passages in McDaniel which: (a) describe treating different parts of the body, (b) disclose providing automatic control of light source arrays by respective preset protocols for different parts of the body, and (c) suggest making an apparatus having multiple independently operable arrays of both visible light emitting devices and invisible light emitting devices.

6. Rather than defending the McDaniel citation, the examiner issued a fourth office action on February 4, 2009. In this non-final action, Van Zuylen et al. was cited for the first time. In response, we argued that neither the references, nor sound reasoning, would have led a person of ordinary skill to combine the features of Diamantopoulos et al. and Van Zuylen et al..

7. A fifth office action (second final rejection) followed, from which this appeal arises.

The difficult prosecution history summarized above seems irregular; it is incomprehensible and frustrating to applicant, and has made the taking of this appeal necessary.

We now address the most current rejection.

Diamantopoulos discloses a treatment apparatus including a cluster probe, containing several different light sources. However, Diamantopoulos does not disclose an apparatus having multiple cluster probes (which the present applicant calls “arrays”), much less multiple arrays which are independently operable.

Van Zuylen et al. discloses a method and apparatus for photon therapy. The therapy unit has a flexible head for conforming to a body part, and has a photon detector which provides feedback to the diode drive circuit to maintain level output. Treatment protocols are generated by a main control unit; the protocols can be selected from a set of protocols. Various protocols and their handling are discussed at col. 11 of Van Zuylen et al.

None of the references discloses a device which includes multiple protocols (preset treatment schedules) for treating different parts of the body, as recited in claim 14. The advantage of this arrangement is that different parts of the body, which may require remarkably different treatment parameters, may be treated simultaneously or in rapid sequence, reducing the time required for the patient, improving treatment reliability and simplifying the task of the practitioner.

Claim 14 is thus deemed allowable for its recitation:

“said light sources being arranged in multiple independently operable arrays of both visible light emitting devices and invisible light emitting devices for providing a harmonizing effect on the body by balancing all the energy centers of the body wherein each of said light source arrays is controlled automatically by a respective one of plural preset protocols, each said protocol defining wavelength, intensity, dosage and treatment values suitable for treatment of a different condition or part of the body.”

Applicant does not claim to have invented controlling electromagnetic energies for treating different dermatologic conditions. Certainly that has been known for many years. What applicant does claim to have invented is an apparatus which contains a plurality of preset protocols and can access them to treat different parts of the body appropriately. The fact that various protocols or procedures may have been

implemented manually in the past does not render obvious an apparatus which automates and simplifies such procedures.

We conclude that the claimed invention would not have been obvious, at the time the invention was made, to person of ordinary skill in the field of this invention, and that the rejections on this ground ought to be reversed.

Respectfully submitted,

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CLAIMS APPENDIX

1 - 13. (canceled)

14. An apparatus for harmonizing energy in Auyverdic therapy with non-ionizing low level bio-energy, said apparatus comprising:

a power source for providing power to light sources which generate light beams for healing purposes,

said light sources being arranged in multiple independently operable arrays of both visible light emitting devices and invisible light emitting devices for providing a harmonizing effect on the body by balancing all the energy centers of the body wherein

each of said light source arrays is controlled automatically by a respective one of plural preset protocols, each said protocol defining wavelength, intensity, dosage and treatment values suitable for treatment of a different condition or part of the body.

15. The apparatus of claim 14, further including a plurality of different applicators including probes, ear probes, wands and arrays to provide non-ionizing bio-energy for treatment.

16. The apparatus of claim 15, wherein the applicators can be turned on or off as needed during treatment.

17 - 18. (canceled)

19. The apparatus of claim 15, wherein the applicators are made of a plastic material having low thermal and electrical conductivity.

20. The apparatus of claim 14, further comprising software adapted to control a count down clock which automatically shuts off the apparatus at a preset time.

EVIDENCE APPENDIX

(Not applicable.)

RELATED PROCEEDINGS APPENDIX

(Not applicable.)